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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 KENNY NOLAN, an individual,

11 Plaintiff,
12 vs.

13 UNIVERSAL MUSIC GROUP
HOLDINGS, INC., a Delaware
14 corporation; JOSEPH ANTONIO
CARTAGENA p/k/a FAT JOE; SIR
15 ROBERT BRYSON HALL II p/k/a
LOGIC; QN5, INC. a New York
16 corporation; OMAR ROGELIO TULL
p/k/a PACKFM; and DOES 1 through
20, inclusive,

17 Defendants.
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Case No.:

COMPLAINT FOR

1. **COPYRIGHT INFRINGEMENT;**
2. **CONTRIBUTORY COPYRIGHT INFRINGEMENT; and**
3. **VICARIOUS COPYRIGHT INFRINGEMENT;**

JURY DEMAND

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24 Plaintiff Kenny Nolan (“Nolan”) alleges as follows:

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I

JURISDICTION

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3 1. This Court has original subject matter jurisdiction over this action
4 because it arises under the laws of the United States, 28 U.S.C. § 1331, more
5 particularly, because it arises under an Act of Congress relating to copyrights,
6 28 U.S.C. § 1338, namely, the Copyright Act of 1976, as amended, 17 U.S.C. §
7 101 *et seq.*
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II

VENUE

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11 2. This Court has personal jurisdiction over defendants Universal
12 Music Group Holdings, Inc. (“UMG”), Joseph Antonio Cartagena p/k/a Fat Joe
13 (“Fat Joe”), Sir Robert Bryson Hall p/k/a Logic (“Logic”), QN5, Inc. (“QN5”)
14 and Omar Rogelio Tull p/k/a PackFM (“PackFM”) (collectively, UMG, Fat Joe,
15 Logic, QN5, and PackFM are the “Defendants”) because the events giving rise
16 to this claim occurred in the Central District of California, some of the
17 defendants reside in or were organized under the laws of California, and all
18 Defendants purposefully directed sales, distributions, or digital transmissions of
19 their recordings, including the infringing works to citizens in California.
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21 3. Venue is also proper in this district under 28 U.S.C. §§ 1391(b)(1)
22 and 1400(a) because Defendants or their agents reside or may be found in this
23 judicial district; and also under 28 U.S.C. § 1391(b)(2) because a substantial
24 part of the events or omissions giving rise to this claim occurred within this
25 district.
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III
PARTIES

4. Nolan is a singer-songwriter with a career spanning over three decades. In addition to writing and recording his own top ten Billboard hits such as “I Like Dreamin’,” Nolan has written and co-written numerous hits for other artists including Frankie Vallie’s “My Eyes Adored You” and Labelle’s “Lady Marmalade,” which not only replaced “My Eyes Adored You” as the number one on the Billboard Hot 100, but which was also covered by several noted artists and has been selected for preservation in the National Recording Registry for being “culturally, historically, or artistically significant.”

5. In 1974, Nolan co-wrote the lyrics and the music to the musical composition, “Nasty” (the “Composition”) which Nolan created as a member of the recording project, The Eleventh Hour. The Composition is registered with the United States Copyright Office (“USCO”) with registration number EP320358. Nolan recorded the vocals in the Composition.

6. Defendant UMG is the biggest music company in the world and is recognized as one of the “Big Three” record labels along with Sony Music and Warner Music Group. UMG owns and operates a broad spectrum of businesses engaged in recorded music, music publishing, merchandising, and audiovisual content in more than 60 territories. UMG’s operational headquarters is located in Santa Monica, California.

7. Defendant JOSEPH ANTONIO CARTAGENA p/k/a FAT JOE is a recording artist providing entertainment services throughout the United States. Fat Joe is a recording artist under UMG.

8. Defendant SIR ROBERT BRYSON HALL II p/k/a LOGIC is a recording artist providing entertainment services throughout the United States. Logic is a recording artist under UMG.

1 9. QN5 is an independent record label that, on information and
2 believe, releases and distributes musical recordings by PackFM.

3 10. Defendant OMAR ROGELIO TULL p/k/a PACKFM is a
4 recording artist providing entertainment services throughout the United States.

5 11. All Defendants are joined pursuant to Fed. R. Civ. P. 20(a)(2).

6 12. Each of the Defendants authorized or ratified the acts or omissions
7 of the other Defendants as herein alleged, and did so for their own financial and
8 individual advantage or the collective advantage of all Defendants.

9 13. Each of the Defendants is jointly and severally liable for the
10 infringements and damages alleged herein.

11 14. Nolan is ignorant of the true names and capacities of the
12 defendants sued herein as Does 1-20, inclusive, and therefore sues these
13 defendants by such fictitious names. Nolan will amend this Complaint to allege
14 the true names and capacities when ascertained. Nolan is informed and
15 believes, and on that basis alleges, that each of the fictitiously-named
16 defendants is responsible in some manner or capacity for the wrongful conduct
17 alleged herein, and that Nolan's loss as alleged herein was proximately and/or
18 directly caused by such defendants' acts.

19 15. All of the claims for copyright infringement joined in this
20 Complaint are governed and arise from or relate to the same transaction or
21 occurrence, or series of transactions or occurrences, and one or more
22 questions(s) of law or fact are common to all the parties. In particular, Nolan
23 alleges that Defendants have infringed his copyrights by sampling both the
24 sound recording and musical composition "Nasty" without authorization. Thus,
25 joinder of these claims will promote the convenient administration of justice
26 and will avoid a multiplicity of separate, similar actions against the Defendants.

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IV

FACTS COMMON TO ALL CLAIMS

16. As set forth above, this case involves the unauthorized use of the Composition's instantly recognizable opening and refrain.

17. Fat Joe's infringing work, entitled "That White," was released in 2008 on the studio album, "The Elephant in the Room." Fat Joe samples the Composition (including Nolan's voice) beginning at the 0:20 mark and the sample repeats throughout the rest of the song. "That White" has garnered over 400,000 combined views on YouTube. "The Elephant in the Room" debuted at number six on the U.S. Billboard 200 chart, selling 47,125 copies in the first week.

18. UMG marketed and distributed Fat Joe's infringing work.

19. Logic's infringing work not coincidentally entitled "Nasty" was released in 2013 as a single and music video. The official video alone has garnered well over 16 million views. Logic's unauthorized version of "Nasty" also appears on his mixtape, "Young Sinatra: Welcome to Forever," which samples from a wide variety of artists and songwriters. Logic samples the Composition (including Nolan's voice) beginning at 0:07. The sample continues throughout the rest of the infringing work.

20. UMG marketed and distributed Logic's infringing work.

21. PackFM's infringing work also entitled "Nasty" was released in 2010. PackFM's unauthorized version of the Composition appears on his album, "I F*cking Hate Rappers." PackFM samples the Composition beginning at the 0:04 mark (including Nolan's voice). The sample continues throughout the rest of the song.

22. QN5 marketed and distributed PackFM's infringing work.

23. "That White," Logic's version of "Nasty," and PackFM's version of "Nasty" (collectively, the "Infringing Works") are derivative works that

1 contain unauthorized samples of the music, the lyrics, and the sound recording
2 of the Composition.

3 24. The Defendants used the Composition without permission to
4 directly benefit from various income sources (album sales, singles sales,
5 streaming, online views) and from the public performance of their Infringing
6 Works.¹

7 25. Without Nolan's permission or permission from any owner of the
8 rights to the Composition, the Defendants used a prevalent and continuous
9 sample of the Composition throughout the Infringing Works, which were
10 featured and distributed in, among other things, the above-referenced albums.

11 26. It is recording industry practice for record labels to require
12 exclusivity from artists that are signed to their labels. An exclusivity clause in a
13 record contract generally gives a record label the exclusive right to release
14 recordings of the artists, along with the right and ability to supervise and control
15 any and all recordings released by the artist during the term of the agreement.
16 Nolan is informed and believes, and based thereon alleges that UMG and QN5
17 supervised and controlled the release of the Infringing Works.

18 27. Nolan notified UMG of the Infringing Works on November 28,
19 2022 via certified mail. In a letter dated December 15, 2022, UMG
20 acknowledged receipt of Nolan's notice regarding the Infringing Works.

21 28. Despite acknowledging the receipt of Nolan's notification letter
22 which provided UMG with direct notice of its artists' infringement, UMG
23 continues to advertise, market, and encourage the infringement of Nolan's
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25 ¹ Fat Joe can be seen publicly performing "That White" here:
26 <https://www.youtube.com/watch?v=iXebLIxjCI>. Logic can be seen publicly
27 performing his version of "Nasty" here:
28 <https://www.youtube.com/watch?v=XsyEwG09hFM>. PackFM can be seen
publicly performing his version of "Nasty" here:
<https://www.youtube.com/watch?v=0XT1ciAqaEk>.

1 copyrights through the marketing and distribution of its artists' Infringing
2 Works.

3 29. Fat Joe, Logic, and PackFM (the "Infringing Artists") contributed
4 to and created derivative musical compositions and derivative sound recordings,
5 respectively, by copying and manipulating (*i.e.*, "sampling") significant
6 portions of the Composition and then reproducing the results of such sampling
7 continuously throughout the Infringing Works.

8 30. UMG and QN5 reproduced, manufactured, distributed, publicly
9 performed, and/or digitally transmitted the Infringing Works (or contributed to
10 the foregoing), which incorporates unauthorized portions of the Composition.

11 31. By promoting the Infringing Works and directing third-parties to
12 permanently download and purchase the Infringing Works, the Defendants took
13 active steps to encourage, recommend, facilitate, and instruct third-parties in
14 how to engage in infringing conduct through the permanent download and
15 purchase of the Infringing Works, which were released and distributed by UMG
16 and QN5 artists with UMG and QN5's knowledge that Defendants were
17 infringing Nolan's valuable copyrights in the Composition.

18 32. In light of its role as Fat Joe and Logic's record label, UMG's
19 continuous promotion and advertisement of "That White" and Logic's version
20 of "Nasty" served to condone, encourage, and facilitate Fat Joe and Logic's
21 ongoing infringing conduct.

22 33. In light of its role as PackFM's record label, QN5's continuous
23 promotion and advertisement of PackFM's version of "Nasty" served to
24 condone, encourage, and facilitate PackFM's ongoing infringing conduct.

25 34. Nolan is informed and believes, and based thereon alleges that
26 UMG and QN5 promoted and advertised the Infringing Works despite their
27 knowledge of the direct infringement by the other Defendants, and despite their
28 right and ability to control the releases and distribution of the Infringing Works.

1 35. Nolan is further informed and believes, and based thereon alleges
2 that UMG and QN5's promotion and advertisement of the Infringing Works
3 served as an apparent authorization, encouragement, and inducement to the
4 Infringing Artists to continue their infringing conduct, including the live
5 performance of the Infringing Works.

6 36. Defendants' conduct with regard to the Infringing Works, as
7 described above, was entirely unlicensed and unauthorized, and was done
8 without the consent or permission of Nolan or any co-owner of the rights in the
9 Composition.

10 37. The foregoing conduct by the Defendants constituted infringement
11 of Nolan's exclusive rights under 17 U.S.C. §§ 106 and 501 of the Copyright
12 Act of 1976.

13 38. As a direct and proximate result of Defendants' conduct, Nolan has
14 suffered and continues to suffer actual and substantial damage in an amount to
15 be proven at trial.

16
17 **FIRST CLAIM FOR RELIEF FOR**
18 **COPYRIGHT INFRINGEMENT**
19 **(Against All Defendants)**

20 39. Nolan repeats and incorporates herein by reference all of the
21 allegations set forth above as though fully set forth herein.

22 40. Nolan is an owner of the Composition, which is the subject of a
23 valid Certificate of Copyright Registration issued by the USCO.

24 41. Defendants all had access to the Composition due to the
25 widespread fame and worldwide release of the Composition, as well as the
26 notoriety of the works by The Eleventh Hour and Nolan.

27 42. There are reproductions of the Composition in the samples used in
28 the Infringing Works.

1 43. Defendants' unauthorized reproductions, distributions, public
2 performances, and/or digital transmissions of the Infringing Works, as alleged
3 above, each constitute separate infringements of Nolan's rights in and to the
4 Composition.

5 44. The foregoing acts of copyright infringement have been willful and
6 intentional.

7 45. As a result of such copyright infringements, Nolan has suffered
8 damages in an amount that will be proven at trial.

9 **SECOND CLAIM FOR RELIEF FOR**
10 **VICARIOUS COPYRIGHT INFRINGEMENT**
11 **(Against All Defendants)**

12 46. Nolan repeats and incorporates herein by reference all of the
13 allegations set forth above as though fully set forth herein.

14 47. Nolan is an owner of the Composition, which is the subject of a
15 valid Certificate of Copyright Registration issued by the USCO.

16 48. Defendants all had access to the Composition due to the
17 widespread fame and worldwide release of the Composition, as well as the
18 notoriety of the works by The Eleventh Hour and Nolan.

19 49. There is a reproduction of the Composition in the samples used in
20 the Infringing Works.

21 50. Defendants' activities, as alleged above, constitute contributory
22 infringement of Nolan's rights in and to the copyright in the Composition in
23 that Defendants each knowingly induced, caused, materially contributed in, and
24 profited from the unauthorized reproduction, distribution, and/or public
25 performance of the Infringing Works by Defendants, among others.

26 51. The foregoing acts of copyright infringement have been willful and
27 intentional.

1 52. As a result of such infringement, Nolan has suffered actual
2 damages in an amount that will be proven at trial.

3 **THIRD CLAIM FOR RELIEF FOR**
4 **VICARIOUS INFRINGEMENT**
5 **(Against All Defendants)**

6 53. Nolan repeats and incorporates herein by reference all of the
7 allegations set forth above as though fully set forth herein.

8 54. Nolan is an owner of the Composition, which is the subject of a
9 valid Certificate of Copyright Registration issued by the USCO.

10 55. Defendants all had access to the Composition due to the
11 widespread fame and worldwide release of the Composition, as well as the
12 notoriety of the works by The Eleventh Hour and Nolan.

13 56. There is a reproduction of the Composition in the samples used in
14 the Infringing Works.

15 57. Defendants activities, as alleged above, constitute vicarious
16 infringement of Nolan's rights in and to the Composition in that Defendants had
17 the right and ability to supervise such direct infringement by Defendants, and
18 because Defendants all had a direct financial interest in the Infringing Works.

19 58. The foregoing acts of copyright infringement have been willful and
20 intentional.

21 59. As a result of such infringement, Nolan has suffered actual
22 damages in an amount that will be proven at trial.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Nolan prays for judgment as follows:

26 1. Pursuant to 17 U.S.C. § 502(a), Defendants, their agents, servants
27 and employees and all parties in privity with them are enjoined permanently
28 from directly or indirectly using the Composition or any other work derived in

1 any way therefrom, in any manner which infringes upon the copyright in the
2 Composition;

3 2. Defendants file with the Court and serve on Nolan a report setting
4 forth the manner and form in which compliance with said permanent injunction
5 against infringement has been made;

6 3. Pursuant to 17 U.S.C. § 504(b), Defendants are required to pay to
7 Nolan such actual damages as Nolan may have sustained in consequence of
8 Defendants' infringement and all profits of Defendants that are attributable to
9 the infringement of Nolan's copyrights;

10 4. Defendants provide Nolan an accounting for all gains, profits and
11 advantages attributable to or derived by Defendants from their infringement;

12 5. Pursuant to 17 U.S.C. § 504(c), Defendants are required to pay an
13 award of statutory damages in a sum of not less than \$30,000 per infringement,
14 should this statutory remedy be elected;

15 6. Defendants' infringements are found to have been willful;

16 7. Pursuant to 17 U.S.C. § 504(c), Defendants are required to pay an
17 award of increased statutory damages in a sum of not less than \$150,000 per
18 infringement for willful infringement, should this statutory remedy be elected;

19 8. Pursuant to 17 U.S.C. § 505, Defendants are required to pay
20 Nolan's full costs in this action and reasonable attorney's fees;

21 9. Defendants are equitably disgorged of wrongfully obtained profits
22 attributable to the Infringing Works;

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1 10. Nolan be awarded such other further relief as is just and equitable.

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3 Dated: February 9, 2023

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BRANDON M. TESSER
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ROBERT PAREDES
Attorneys for Plaintiff
KENNY NOLAN

DEMAND FOR JURY TRIAL

Nolan hereby demands a jury trial on all claims for relief which may be tried to a jury.

Dated: February 9, 2023

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Attorneys for Plaintiff
KENNY NOLAN